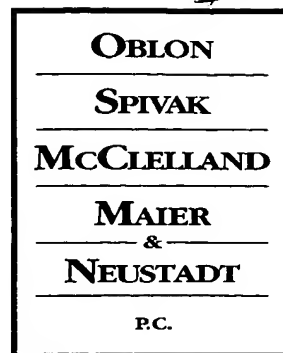




Docket No.: 243717US3DIV

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313



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RE: Application Serial No.: 10/686,861

Applicants: Atsushi TABATA

Filing Date: October 17, 2003

For: MOVING OBJECT WITH FUEL CELLS
INCORPORATED THEREIN AND METHOD OF
CONTROLLING THE SAME

Group Art Unit: 3618

Examiner: BOTTORFF, C.

SIR:

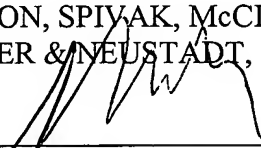
Attached hereto for filing are the following papers:

RESTRICTION RESPONSE

Our check in the amount of \$0.00 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
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DOCKET NO: 243717US3DIV

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

RE APPLICATION OF

:

ATSUSHI TABATA

: EXAMINER: BOTTORFF. C.

SERIAL NO: 10/686,861

:

FILED: OCTOBER 17, 2003

: GROUP ART UNIT: 3618

FOR: MOVING OBJECT WITH FUEL
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METHOD OF CONTROLLING THE
SAME

:

RESTRICTION RESPONSE

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Office Action dated May 25, 2004, Applicant herein elects Group I, claims 28-48, for prosecution in the present application. Applicant further elects species "A" of Figures 1-19. Claims 28-40 and 44-48 read on the elected species.

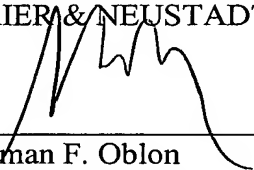
The election requirement is traversed. For example, claims 28 and 49 both recite a moving object comprising a fuel cell and a control unit that controls operations according to a driving state of the moving object. The Examiner has not set forth the manner in which these inventions are independent or distinct. Instead, the Examiner has relied upon a standard allegedly found in MPEP §806.04 and §808.01. However, the referenced portions of the MPEP are directed to election of species and not restriction between distinct inventions. The Examiner has subsequently required an election of species A-L, but has not set forth a justification for a requirement for a restriction between, for example, the moving object of claims 28-48 and the moving object of claims 49-60, which are not alleged to correspond to

Application No. 10/686,861
Reply to Office Action of May 25, 2004

different species. Applicant therefore respectfully submits that the Examiner has not met the required burden for establishing that the claims recite distinct inventions which are susceptible to restriction, and so the outstanding restriction requirement is respectfully traversed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



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